

ORDINANCE #82

AN ORDINANCE OF THE CITY OF ROSE CREEK, MINNESOTA, GRANTING AND AMENDING A FRANCHISE TO ITS SUCCESSORS AND ASSIGNS TO OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF ROSE CREEK SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT AND AMENDMENT OF THE FRANCHISE, PROVIDING FOR CITY REGULATION AND USE OF CABLE COMMUNICATIONS SYSTEM, AND PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS.

THE COMMON COUNCIL OF THE CITY OF ROSE CREEK DO ORDAIN:

Section 1. DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "City" is the City of Rose Creek, Minnesota, and includes no service beyond the city limits.
- (2) "Company" is the grantee of right under this Franchise. The grantee herein in Lake Cable Partners, whose address is 2444 Solomons Island Road, Suite 202, Annapolis, Maryland 21401.
- (3) "Council" is the City Council of the City of Rose Creek, Minnesota, whose address is Box 101, Rose Creek, Minnesota 55970.
- (4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (5) "Class IV Cable Communications Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the communications system.

Section 2. GRANT OF AUTHORITY.

WHEREAS, the City has, following reasonable notice, conducted a full public hearing, affording all persons reasonable opportunity to be heard, which proceeding was concerned with the analysis and consideration of the technical ability, financial condition, legal qualification and general character of the Company, and

WHEREAS, the City after such consideration, analysis and deliberation, has approved and found sufficient the technical ability, financial condition, legal qualifications and general character of the Company, and

WHEREAS, the City has at the said public hearing, also considered and analyzed the plans of the Company for the construction and operation of the cable communication system and found the same to be adequate and feasible in view of the needs and requirements of the entire area to be served by the system, and

WHEREAS, the Company desires to be granted the continued right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over, and under publicly dedicated streets, alleys and utility easements within the City of Rose Creek conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the

City of Rose Creek, a cable communication system for the interception, sale and distribution of television, radio and other electronic signals.

(1) Non-Exclusive Grant. The Company is hereby granted the continuing right to use and occupy said publicly dedicated streets, alleys and utility easements until the termination of the franchise.

(2) Removal; Renegotiation. Any renewal of this franchise shall be for a period of not more than 15 years, and renewal shall only be granted after holding a public hearing, with reasonable notice to and opportunity for representatives of Company and the public to be heard. Renewal proceedings shall follow the requirements of State law. Renegotiation of any or all of the terms of the franchise may occur at such time as may be mutually agreed upon by the City and Company. Any renegotiation for a renewed franchise shall occur no less than one year prior to the end of the franchise term, unless the City determines not to reissue the franchise to the Company or desires to consider additional applicants for a franchise.

### Section 3. COMPLIANCE WITH STATE AND FEDERAL LAWS.

The Company shall conform to all State laws and rules regarding cable communication not later than one year after they become effective unless otherwise stated, and shall conform to all Federal laws and regulations regarding cable as they become effective.

### Section 4. COMPANY LIABILITY-INDEMNIFICATION.

The Company shall, at all times indemnify and save the City harmless from and against any and all damages, lawful claims and demands for the injury to person or property which may be made against the City, arising from the Company's maintenance or operation, or both, of such Cable Communication System or any equipment of the Company within the franchise area, and in suit filed against the City, either independently or jointly with the Company, to recover for any such claim or damages, the Company upon notice to it by the City, shall defend the City against any action, either independently or jointly with the Company, on account solely of the acts of the Company, and the Company will pay any judgment with all costs, and shall hold the City harmless therefrom.

### Section 5. SERVICE AND TECHNICAL STANDARDS

The Company shall maintain and operate the CATV system and render efficient service in accordance with the rules and regulations as the rules and regulations are, or may be, set forth by the Council, or by the proper Federal and/or state regulatory body.

(1) The Company shall operate and maintain its cable television system in full compliance with the technical standards set forth by the Federal Communications Commission as set forth in Subpart K of part 76 of the Commission's rules which are hereby incorporated by reference.

(a) In the event Company's operation should interfere with existing TV or radio reception or radiation should emanate from the Company's cable to private receiving antennas in the City, and the same is not corrected within a reasonable time after Company shall have been notified

of such interference; then, the Council of the City may commence a proceeding to consider whether the Company should remain a franchised operator of a CATV system in the City. The Company shall have notice and an opportunity to be heard.

(2) The Company shall provide a toll-free telephone number for subscriber complaints and shall maintain a repair service capable of responding to subscriber complaints or requests for service (excluding requests for installation of service) within 72 hours after receipt of the complaint or request.

(3) Whenever it is necessary to shut off or interrupt services for the purposes of making repairs, adjustment or installation, the Company shall do so during periods of minimum use by subscribers. All costs incurred in making such repairs, adjustments or installation shall be borne by the Company unless otherwise provided for in this ordinance.

(4) The Company shall not engage in the business of providing television set repair service.

(5) The Company shall, upon the request of any subscriber, promptly remove all wires and equipment from the premises of such subscriber at no expense to such subscriber.

(6) Within six months of the date of publication and if weather is permitting, the Company shall provide a cable communication system having a minimum 300 Mhz of Bandwidth (the equivalent of 35 channels).

(7) All complaints by subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable television system shall be responded to by the Company, whenever possible, within 24 hours. The Company shall resolve the cause of the complaint, if reasonably possible. If a subscriber or citizen complaint cannot be resolved within five working days, the complainant may then file a written complaint with the City. If the complaint cannot be satisfied by the City Administrator through mediation between the Company and the subscriber or citizen, such complaint shall be referred to the City Council for a hearing. The Company shall comply with any reasonable orders of the City Council in connection with said complaint.

#### Section 6. CONSTRUCTION STANDARDS.

(1) Company shall not open or disturb the surface of any street, berm, boulevard, sidewalk, driveway or public place without first obtaining a permit from the proper authority, for which permit the City may impose a reasonable fee to be paid by the Company. The lines, conduits, cables and other property placed in the streets, alleys or utility easements pursuant to such permit, shall be located in the streets, berm or portions of the streets, berm and public places as shall be determined by the proper authority. The Company shall, upon completion of any work requiring the opening of any street or public places, restore the same including the pavement and its foundations, to as good a condition as they were formerly, and in a manner and quality approved by the proper municipal authority, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with due diligence and if the Company shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street, berm or public place back into good condition,

the City shall have the right to put the street, berm or public place back into good condition, at the expense of the Company and the Company shall, upon demand, pay to the City the reasonable cost of such work done or performed.

(2) All wires, conduits, cable, and other property and facilities of the Company shall be located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon the streets, berm and public places of the Franchise area. The Company shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any person. The Company shall conduct its business in a manner which does not endanger or interfere with the safety of persons or property within the City. The City shall have the right to inspect and examine at any reasonable time and upon reasonable notice the property owned or used, in part or in whole, by the Company.

(3) All wires, cables, amplifiers and other property of the Company shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(4) The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of the buildings. The expense of such temporary removal, raising or lowering of wires, shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than 48 hours advance notice to arrange for such temporary wire changes.

(5) The Company shall have the authority to trim trees upon and overhanging streets, berms, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, all trimming to be done at the expense of the Company and under the approval of the City.

(6) The Company shall install and maintain its system in a workmanlike manner. It shall abide by the applicable FCC or other Federal, State and local regulations and Statutes including but not limited to the Telecommunications Act of 1984.

(a) National Electric Safety Code (National Bureau of Standards)

(b) National Electric Code (National Bureau of Fire Underwriters)

(c) Bell System Code of Pole Line Construction.

(7) Whenever the City shall undertake any public improvements which affects cable communications equipment, it shall, with due regard to reasonable working conditions, direct the Company to remove or relocate its wires, conduits, cables, and other property located in said street, right-of-way or public place. The Company shall relocate or protect its facilities at its own expense. The City shall give the Company reasonable notice of the undertaking of public improvements which affect the Company's cable communication equipment.

(8) The Company shall keep accurate maps and records as reasonably requested by the City of the location of its equipment and lines.

#### Section 7. DISCRIMINATORY PRACTICES PROHIBITED.

The Company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, subject any person to any prejudice or disadvantage, provided that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedule to which any customer coming within such classification would be entitled.

#### Section 8. EXTENSION POLICY.

(1) No person in the Company's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, such as when the distance from distribution cable to connection of service to subscribers is more than 45 meters (150 feet), service may be made available upon the payment to the Company by subscriber the costs of materials, labor and easements, in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas.

#### Section 9. APPROVAL OF TRANSFER.

The Company shall not sell or transfer its franchise or system to another, nor transfer any rights under this Franchise to another or sell or transfer the stock of the Company so as to create a new controlling interest, without prior written consent of the Council, which consent shall not be unreasonably withheld. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Clerk an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the Franchise agreeing to perform all the conditions thereof and seeking the City approval of the sale or transfer. The Council approval will not be unreasonably withheld, and neither this Section nor other Sections of this Franchise shall preclude the mortgaging, hypothecating, or assigning of certain rights in the system, or the pledge of stock by the Company for the purpose of financing.

#### Section 10. CITY RIGHTS IN FRANCHISE.

(1) City Rules. The right is hereby reserved to the City to adopt, in addition to provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance, shall be reasonable and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the United States and the State of Minnesota.

(2) Use of System by City. The City shall have the right, during the life of this Franchise, free of charge, where aerial construction exists, to construct and maintain upon the poles of the Company, within the City limits, wire and pole fixtures necessary for a police and fire alarm system, such wires and fixtures to be constructed and maintained to the satisfaction of the Company and in accordance with its specifications.

(a) The City in its construction uses and maintenances of such wires and fixtures on Company poles shall at all times comply with the rules and regulations of the Company so that there may be minimum danger of contact or conflict between the wires and fixtures of the Company and the wires and fixtures used by the City.

(b) The City shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of said wires and fixtures authorized by this Section for a police and fire alarm system and shall save the Company harmless for all claims and demands whatsoever arising out of the attachment, maintenance, change or removal of said wires and fixtures upon the poles of the Company. In case of rearrangement of the Company plant or removal of poles or fixtures for a police and fire alarm system the City shall save the Company harmless from any damage to persons or property arising out of the removal or construction of its wires or other fixtures.

(c) Nothing contained in the Franchise shall relieve the City, its employees, agents or contractors or other persons from liability arising out of the failure to exercise reasonable care to avoid injuring the Company's equipment or facilities while such person is performing any work connected with grading, regrading, changing the line of any street or public place, or with the construction or reconstruction of any sewer or water system, or with respect to any overhead or aerial construction or other work near the Company's aerial facilities.

(3) Supervision and Inspection. The City shall have the right to supervise all construction or installation work performed subject to the provisions of the Ordinance and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

(4) Procedure Upon Termination. Upon termination or forfeiture of this Franchise, the Company shall, within a reasonable time, remove its cables, wires and appliances from publicly dedicated streets, alleys or utility easements within the City. In the event of the failure of the Company to remove its cables, wires and appliances as above required, the City shall have the right to make written demand on the Company for such performance and in the event of the failure of the Company to commence the removal of such equipment within 30 days from the date of such demand and in the event of the failure of the Company to commence the removal of such equipment within 30 days from the date of such demand, the City shall be entitled to remove the equipment. The City shall store such equipment for a 90 day period. If the Company has not taken possession of the equipment within 90 days and reimburse the City its reasonable costs for removal and storage of said equipment, then the City shall be entitled upon notice to the Company to dispose of the property. Nothing in this section shall be construed as prohibiting or in any way limiting any separate contractual provisions with respect to removal of cables, wires, and appliances nor or hereafter entered into by the Company in separate pole rental agreements.

(5) Right of Acquisition by the City.

(a) When the franchise or a cable system is offered for sale by the Company, the Company shall notify the City of its intent to sell so that the City shall

have the right to competitively bid for the purchase of the cable system. The City does not have a right of first refusal or first option to purchase.

#### Section 11. PUBLICATION COSTS.

The Company shall reimburse the City for the cost of publication of this Ordinance as such publication may be required and allowed under Minnesota law. A bill for publication costs shall be presented to the Company by the City Clerk and shall be paid by the Company within 30 days of the receipt of the bill.

#### Section 12. TERMINATION.

The City may terminate and cancel the Franchise and all rights and privileges of the Franchise in the event that the Company violates any material provision of the Franchise ordinance or any rule, order or determination of the City ordinance or practices any fraud or deceit upon the municipality, or attempts to evade any of the material provisions of the franchise ordinance. Conditions or circumstances for the municipality's termination of the Franchise shall include, but not necessarily be limited to the following:

- (a) If the Company should default in the performance of any of its material obligations under the Franchise, and shall fail to act on the default within 30 days after receiving written notice of default;
- (b) If a petition is filed by the Company under the Bankruptcy Act, or other insolvency or creditor's rights law, state or Federal or the Company is adjudged a bankrupt or insolvent under any insolvency or creditor's right, law state or Federal.
- (c) Provided, however, the Company shall not be deemed to be in default for performance of any provision of this grant, nor shall any forfeiture be invoked for any violation or failure to perform any provision hereof due to strikes, lock-outs, insurrections, acts of God, or any cause beyond the control of the Company.

The City shall provide the Company with a written notice of the cause for termination and its intention to terminate the Franchise, and shall allow the Company a minimum of 30 days subsequent to receipt of the notice in which to correct the violation. The Company shall be provided with an opportunity to be heard at a public hearing before the governing body of the City prior to the termination of the Franchise.

#### Section 13. INSURANCE.

The Company shall obtain and file with the City Clerk of the City of Rose Creek, Minnesota, and continue to keep the same in full force and effect during the period of this grant, liability insurance policy or policies, or bond or bonds or indemnity as the Company may elect, conditioned for the benefit of persons suffering injury, loss or damage in person or property, by virtue of the negligent operation of said Cable Communications System by said Company, which policy or policies, or bond or bonds of indemnity shall be in companies or with sureties to be approved by the City Council of the City of Rose Creek, Minnesota. Such liability policy or policies, indemnity bond or bonds shall be in the sum of not less than

100,000 for injury or death to any one person, and not less than the sum of 500,000 for the death or injury to a persons affected by any one accident, and not less than 100,000 for damage to property in any one accident. Insurance or bonds to the amount required in this ordinance shall be in effect during the entire time said Cable Communications System is in operation under this Franchise. The Company shall also carry Workmen's Compensation coverage for all of its employees subject to such coverage. The Company shall submit to the City Clerk a certificate showing that Workmen's Compensation coverage is in effect.

#### Section 14. VIOLATIONS, PENALTIES.

(1) From and after the effective date of this ordinance, it shall be unlawful for any person to construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately-owned area within the city, which has not yet become a public street, but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.

(2) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, to any part of the franchised CATV system within this City for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the Company.

(3) It shall be unlawful for any person, without the consent of the owner willfully to tamper with, remove or injure any cable, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

(4) Any person violating or failing to comply with any of the provisions of Paragraphs 1, 2 or 3 of this Section shall be guilty of a misdemeanor.

(5) No person, firm or corporation shall be prosecuted under Paragraph 2 or 3 of this Section, except upon written complaint of the Company detailing the nature and extent of the violation.

#### Section 15. TWO-WAY CAPABILITY.

The Company shall provide a cable communications system having the technical capacity for non-voice return communications which, for the purposes of this requirement shall mean the provision of system design features suitable for subsequent insertion of necessary non-voice return communications components.

#### Section 16. SUBSCRIBER PRIVACY.

No signals of a Class IV cable communications channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed



one (1) year, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. Such authorization is required for each type or classification of Class IV cable communications activity planned for the purpose.

(1) No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including, but not limited to, lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers, shall be sold or otherwise made available to any party other than to the Company and its employees for internal business use, or to the subscriber subject of that information, unless the Company has received specific written authorization from the subscriber to make such data available.

(2) Written permission from the subscriber shall not be required for the Company to conduct system-wide or individual addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in 4 MCAR Section 4.202 W.1.

#### Section 17. FRANCHISE ADMINISTRATOR.

The City Council shall be responsible for the continuing administration of this franchise.

#### Section 18. ABANDONMENT.

The Company may not abandon any portion of the cable communication service provided hereunder, without having given three months prior written notice to the City. Further, the Company may not abandon any cable communications service or any portion of the cable communications service without compensating the City for damages resulting from the abandonment.

#### Section 19. SPECIAL TESTING.

In the event that special testing is required by the City to determine the source of technical difficulties, the cost of said testing shall be borne by the Company if the testing reveals the cable company to be responsible. If the testing reveals the difficulties to be caused by factors which are beyond the cable company control, the cost of testing shall be borne by the City.

#### Section 20. PERFORMANCE BOND.

The Company shall furnish to the City a performance bond in the amount of \$10,000.00 conditioned upon the Company's promise to establish its cable service to the City's community by the date set forth above (Section 5 (6)). Once the cable service has been installed and cable service is available to the residents of the City, the bond shall be discharged.

#### Section 21. SEVERABILITY.

Should any section, clause or provision of this Franchise Ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the Franchise Ordinance as a whole or any part thereof other than the part so declared invalid.

Passed by a vote of Yeas and Nays this 29<sup>th</sup> day of August  
1989.

YEAS 4

NAYS 0

APPROVED:

Lud Sicking  
Mayor

ATTEST:

Amel Aoben  
City Recorder